

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

PHILLIP J. LYONS,

Plaintiff,

vs.

STATE OF NEVADA ex rel, c/o ORTIZ, et  
al.,

Defendants.

Case No. 2:10-CV-00707-JCM-(LRL)

**ORDER**

Defendant State of Nevada removed this action from state court to this court. Before this court is plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983. The court has reviewed the complaint, and plaintiff will need to amend it.

When a "prisoner seeks redress from a governmental entity or officer or employee of a governmental entity," the court must "identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. North Star Intern. v. Arizona Corp. Comm'n, 720 F.2d 578, 580 (9th Cir. 1983). In considering whether the plaintiff has stated a claim upon which relief can be granted, all material allegations in the complaint are accepted as true and are to be construed in the light most favorable to the plaintiff. Russell v. Landrieu, 621 F.2d 1037,

1 1039 (9th Cir. 1980). Allegations of a pro se complainant are held to less stringent standards than  
2 formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).

3 In count 1, plaintiff claims that defendants Ortiz and Baker were deliberately  
4 indifferent to plaintiff's pain and risk to his safety. He alleges that when he was being transported,  
5 these defendants placed "black box" restraints on his wrists that caused pain, welting, swelling, and  
6 bruising. He also alleges that he was transported with two high-risk, maximum-security inmates  
7 that were infected with hepatitis C. To that extent, plaintiff has stated a claim in count 1. Plaintiff  
8 also alleges that defendants Henley, Donat, and Helling denied the grievances that plaintiff filed on  
9 this issue. Plaintiff does not have a federal constitutional right to an effective grievance procedure.  
10 Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988) (order). Furthermore, plaintiff appears to claim  
11 that defendants Skolnick, Henley, Donat, and Helling should be liable because of their supervisory  
12 positions.

13 Under Section 1983, supervisory officials are not liable for actions of subordinates  
14 on any theory of vicarious liability. A supervisor may be liable if there exists either  
15 (1) his or her personal involvement in the constitutional deprivation, or (2) a  
sufficient causal connection between the supervisor's wrongful conduct and the  
constitutional violation.

16 Supervisory liability exists even without overt personal participation in the  
17 offensive act if supervisory officials implement a policy so deficient that the  
18 policy "itself is a repudiation of constitutional rights" and is "the moving  
force of the constitutional violation."

19 Hansen v. Black 885 F.2d 642, 645-46 (9th Cir. 1989) (citing and quoting Pembaur v. City of  
20 Cincinnati, 475 U.S. 469, 479 (1986), and Thompkins v. Belt, 828 F.2d 298, 303-04 (5th Cir. 1987).  
21 Plaintiff needs to allege how defendants Skolnick, Henley, Donat, and Helling were personally  
22 involved in or connected to his transportation.

23 In count 2, plaintiff alleges that he was strip searched outdoors, in the cold, in front  
24 of other inmates, while awaiting classification at the Lovelock Correctional Center. Plaintiff alleges  
25 that defendants Sims, Gentry, Pope, and Nielsen searched the inmates, while defendant Terance  
26 stood watch with a shotgun. Plaintiff also claims that defendants Skolnick, Cox, Palmer, and  
27 Halstead promulgated the policies or practices that allowed the search. The implementation of a  
28 policy can make a supervisor liable if the policy repudiates constitutional rights and causes the

1 constitutional violation. Hansen, 885 F.2d at 646. A determination of whether the strip search was  
2 constitutional requires the court to evaluate factors that the parties have not yet developed. See  
3 Michenfelder v. Sumner, 860 F.2d 328, 331 (9th Cir. 1988) (citing Turner v. Safley, 482 U.S. 78  
4 (1987)). To that extent plaintiff has stated a claim in count 2. Plaintiff also alleges that defendants  
5 Baze, Palmer, and Cox denied the grievances that plaintiff filed on this issue. Plaintiff does not  
6 have a federal constitutional right to an effective grievance procedure. Mann, 855 F.2d at 640.  
7 Plaintiff will need to allege how defendant Baze was personally involved in the strip search at  
8 Lovelock.

9               Count 3 concerns the confiscation of plaintiff's hot pot. Plaintiff alleges that after he  
10 arrived at the Lovelock Correctional Center, he tried to retrieve his personal property, and that  
11 defendant Vallaster gave him an unauthorized property notice stating that his hot pot had been  
12 confiscated because its wiring had been altered. Plaintiff told defendant Vallaster that he would be  
13 filing grievances on the matter. Some days later, plaintiff went to the property room to collect items  
14 that he had purchased. He alleges that he discussed the issue of the hot pot with defendant  
15 Soonwing, who was on duty at the time. Defendant Soonwing inspected the hot pot, determined  
16 that the wiring was not altered, and gave the hot pot to plaintiff. Plaintiff alleges that four days  
17 later, he went to his unit office to help another inmate with that inmate's unauthorized property.  
18 Plaintiff told defendant Terance that the other inmate would be filing a grievance, and defendant  
19 Terance also learned that plaintiff had obtained his hot pot. Defendant Terance passed on that  
20 information to defendant Vallaster, who directed defendant Gonzales to confiscate plaintiff's hot pot  
21 again. Defendants Vallaster and Terance then charged plaintiff with possession of contraband. The  
22 charges were dismissed, but plaintiff's hot pot has not been returned to him. Plaintiff has stated a  
23 claim that defendants Vallaster, Terance, and Gonzales retaliated against him for exercising his  
24 constitutional rights. See Barnett v. Centoni, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam).  
25 Plaintiff also complains that defendants Baze, Palmer, and Helling denied his grievances on this  
26 issue, but plaintiff does not have a federal constitutional right to an effective grievance procedure.  
27 Mann, 855 F.2d at 640. Finally, although plaintiff has named Soonwing as a defendant, he has not  
28 alleged how defendant Soonwing violated his rights.

1 Count 4 involves another strip search, in the cold and in front of other prisoners, this  
2 time while plaintiff was in transit through the Ely State Prison. As with count 2, plaintiff has stated  
3 a claim against defendants Dutton, Ritchie, and Jones, who conducted the search. Plaintiff also has  
4 stated a claim against defendants Willis, Endel, McDaniel, Cox, and Skolnick, because he alleges  
5 that they promulgated the policy or practice that allowed the search.

6 Count 4 also concerns plaintiff's accommodations at the Ely State Prison. He spent a  
7 night in that prison's gymnasium before he continued his transportation to another prison. Plaintiff  
8 also claims in count 4 that he was not provided a toothbrush, toothpaste, and a towel. Indigent  
9 inmates have the right to personal hygiene supplies such as toothbrushes and soap. Keenan v. Hall,  
10 83 F.3d 1083, 1091 (9th Cir.1996), as amended by 135 F.3d 1318 (9th Cir.1998). However, unless  
11 plaintiff can allege other facts showing why those items were particularly necessary, deprivation of  
12 those items for one night is not a constitutional deprivation. See Hutto v. Finney, 437 U.S. 678,  
13 686-87 (1978) ("A filthy, overcrowded cell and a diet of 'grue' might be tolerable for a few days  
14 and intolerably cruel for weeks or months.").

15 In count 5, plaintiff alleges that an officer erred in telling family members that  
16 plaintiff was not housed at the Southern Desert Correctional Center, resulting in a missed visit.  
17 Plaintiff further alleges that he filed a grievance about the missed visit, and that defendant Adams  
18 then charged him with extortion and making threats in retaliation for filing the grievance. This part  
19 of count 5 states a claim of retaliation. See Barnett, 31 F.3d at 815-16. Plaintiff alleges that  
20 defendant Klein delivered the notice of charges to plaintiff and to the disciplinary committee, but  
21 plaintiff has not alleged any facts that indicates that defendant Klein took part in a decision to  
22 retaliate against plaintiff. Finally, plaintiff alleges that defendants Burson, Williams, and Cox  
23 denied his grievances asking that the charges be dismissed, but plaintiff does not have a federal  
24 constitutional right to an effective grievance procedure. Mann, 855 F.2d at 640. Plaintiff will need  
25 to allege how defendants Klein, Burson, Williams, and Cox were involved in these events.

26 In count 6, plaintiff claims that defendants Howell, Williams, Cox, and Skolnick  
27 developed a policy that allowed prison staff to refuse to issue toilet paper to plaintiff. Plaintiff also  
28 claims that on February 4, 2010, defendants Jones and Ferber refused to issue plaintiff any toilet

1 paper. In contrast with the one-night deprivation of a toothbrush, toothpaste, and a towel alleged in  
 2 count 4, which needs further allegations of fact, the court can easily imagine how even a one-day  
 3 deprivation of toilet paper might be a constitutional problem. See Keenan, 83 F.3d at 1083. Count  
 4 6 states a claim.

5 In count 7, plaintiff claims that defendant Burson violated his rights guaranteed by  
 6 the First Amendment because she required him to pay to participate in the Islamic festival of Eid.  
 7 That part of the count states a claim. Plaintiff also claims that defendant Cox denied his grievance  
 8 on the matter, but plaintiff does not have a federal constitutional right to an effective grievance  
 9 procedure. Mann, 855 F.2d at 640. Plaintiff will need to allege how defendant Cox was involved in  
 10 the requirement that he pay to participate in Eid.

11 Plaintiff has submitted a motion to compel notice of acceptance of service (#7), and  
 12 defendants have filed an opposition (#9). The court will wait until plaintiff has submitted his  
 13 amended complaint to determine which defendants need to be served.

14 IT IS THEREFORE ORDERED that the clerk shall send to plaintiff a civil rights  
 15 complaint form with instructions. Plaintiff will have thirty (30) days from the date that this order is  
 16 entered to submit his amended complaint, if he believes that he can correct the noted deficiencies.  
 17 Failure to comply with this order will result in the dismissal of counts 1, 2, 3, 4, 5, and 7 from this  
 18 action.

19 IT IS FURTHER ORDERED that plaintiff shall clearly title the amended complaint  
 20 as such by placing the word "AMENDED" immediately above "Civil Rights Complaint Pursuant to  
 21 42 U.S.C. § 1983" on page 1 in the caption, and plaintiff shall place the case number, 2:10-CV-  
 22 00707-JCM-(LRL), above the word "AMENDED."

23 IT IS FURTHER ORDERED that plaintiff's motion to compel notice of acceptance  
 24 of service (#7) is **DENIED**.

25 DATED: July 28, 2010

26  
 27   
 28 JAMES C. MAHAN  
 United States District Judge